

(1)(2) Claimant requested preliminary medical and temporary total disability benefits for an alleged work-related injury he claimed to have occurred while working for the respondent on January 17, 1995. The Administrative Law Judge denied claimant's request, finding that the claimant had failed to present sufficient proof of an injury and failed to give proper notice as required by K.S.A. 44-520. Claimant appealed and argued that he hurt his low back lifting a roll of carpet at work and he notified the respondent the next day of such injury. Claimant contended that he notified the respondent through Jack Herring, fulfillment manager for the respondent and claimant's supervisor, the day after the alleged accident. Claimant testified that he told Mr. Herring that he hurt his low back when he was picking up a roll of carpet with a fellow employee on January 17, 1995. Claimant further testified that Mr. Herring then had him fill out a Resignation Statement that stated that the reasons for his resignation were, "Heavy lifting too much for me. Back hurts." Mr. Herring, on the other hand, testified that the particular morning that the claimant came into work and notified him that he was quitting, claimant only told him that the reason he was quitting was because he could not physically perform the work. Mr. Herring specifically recalled that the claimant never told him that he had hurt his back at work the day before lifting a carpet roll.

The voluminous preliminary hearing record does not contain any evidence that the claimant requested medical treatment for his low back from the respondent until his attorney made a demand upon the respondent in August 1995. Claimant testified that he hurt his back and the injury prevented him from performing any type of work since January 1995. He testified the reason he did not seek medical treatment until August 1995 was because he did not have any insurance to cover it. Claimant's attorney sent him to the University of Kansas Medical Center Emergency Room on September 14, 1995. These medical records indicate that claimant injured his back some eight months prior to September 14, 1995. However, the medical records did not specifically state that claimant injured his back at work. X-rays taken at that time were negative. Additionally, the nurse's notes indicate that the claimant had no significant complaints at that time.

Claimant testified in person before the Administrative Law Judge on November 16, 1995. The transcript of that testimony consisted of 106 pages, plus exhibits. The preliminary hearing was then continued by deposition and completed on December 7, 1995. That transcript contained testimony of three representatives of the respondent and contained an additional 118 pages, plus exhibits. The claimant and the respondent's representatives gave contradicting testimony. In this instance, the Administrative Law Judge had the opportunity to personally observe and determine the credibility of the claimant who testified in person at length before him. In finding adverse to the claimant, the Administrative Law Judge had to determine that the testimony of the claimant was not credible. The Appeals Board finds that some deference should be given to the Administrative Law Judge as he was able to personally assess the credibility of the claimant. Accordingly, after a review of the whole evidentiary record and giving deference to the Administrative Law Judge, the Appeals Board affirms the Administrative Law Judge's order that denied claimant's request for preliminary benefits.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing order of Administrative Law Judge Robert H. Foerschler dated March 27, 1996, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

c: Carston C. Johannsen, Lenexa, KS
Katherine A. Haggard, Kansas City, MO
Bren Abbott, Kansas City, MO
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director